

FILED  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

2011 NOV -4 P 12:13

CLERK'S OFFICE  
AT BALTIMORE

v.

BY \_\_\_\_\_ \* DEPUTY CRIMINAL NO. JFM-06-0478  
\* CIVIL NO. JFM-11-771  
\*

KEVIN MILLER

\*\*\*\*\*

MEMORANDUM

Kevin Miller has filed a "Motion For Relief From Judgement" in which he argues (correctly) that this court did not rule upon his claim that his trial counsel was ineffective for failing to call three witnesses on his behalf. He identifies the witnesses that he believes counsel should have called as Stanley Harrison, Maxie Graham, and Durell Evans.

Miller has made absolutely no showing that the testimony of the three witnesses who he now says he wanted to call would have exonerated him. Indeed, Harrison, one of the persons identified by Miller, was a co-defendant who had an absolute right not to testify. In any event, the law is clear that the decision whether to call a witness is a "strategic decision demanding the assessment and balancing of perceived benefits against perceived risks, and one to which [w]e must afford . . . enormous deference." *United States v. Kozinski*, 16 F.3d 795, 813 (7th Cir. 1994). There is no basis on the record to conclude that the decision not to call the witnesses not proffered by Miller constituted ineffective assistance of counsel.

A separate order denying Miller's motion for judgment is being entered herewith.

Date: 11/7/11

  
J. Frederick Motz  
United States District Judge